

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number: 2005-HICIL-15
Proof of Claim Number: CLMN380542
Claimant Name: Madelyn Miller**

LIQUIDATOR'S WRITTEN SUBMISSION

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, solely in his capacity as Liquidator of The Home Insurance Company ("Liquidator"), by and through counsel, hereby submits this written submission in accordance with Referee Paula Rogers' ("Referee") ruling of April 18, 2006. In an effort to summarize the extensive factual and procedural history of Claimant, Madelyn Miller's ("Claimant"), claim, Liquidator previously furnished Referee with a summary statement dated March 27, 2006 (*copy annexed for ease of reference as Exhibit A.*) Liquidator's statement outlined numerous reasons why the Notice of Determination ("NOD") denying Claimant's claim was and remains appropriate in all respects. Claimant's further submission of June 2, 2006 raised no new issue or argument that would justify reconsideration of Liquidator's position and instead confirmed that the NOD denying Claimant's claim was entirely justified.

As evidenced by the many attachments to the Case File prepared for this matter, over the course of the last two decades Claimant has presented aspects of her case to numerous trial and appellate courts including New York's highest court and even the United States Supreme Court. It is not disputed that all of Claimant's efforts were ultimately unsuccessful. Notwithstanding Claimant's assertion that she did not have "a full and fair opportunity to litigate [her] claim in New York," (*Claimant's Written Submission at 3*) the relevant facts are not contested, namely:

1. New York Supreme Court Justice Thomas A. Adams, in a six (6) page decision dated September 8, 1993, noted that “[t]he basis of plaintiff’s various malpractice claims in this lawsuit concern the interest she received on the judgment.” (*Case File, Exhibit J at 2.*) Justice Adams thereafter ruled that Claimant’s causes of action should be dismissed based upon her failure to state a cause of action (counts one, two, three and five), expiration of the applicable statute of limitations (count four) and generally that the court found “against [Claimant] as to the state of the law on interest in 1985. . .” (*Case File, Exhibit J at 6.*)
2. Justice Adams, citing *Duque v. Ortiz*, 154 AD2d 333, denied Claimant’s motion to reargue noting that the court “did not misapprehend any facts or misinterpret any controlling principles of law therein.” (*Case File, Exhibit K.*)
3. The Appellate Division of the Supreme Court of the State of New York, Second Department dismissed Claimant’s appeal of the foregoing by Decision and Order dated October 12, 1994. (*Case File, Exhibit L.*)
4. Numerous further attempts by Claimant to seek relief were either dismissed, determined to be time-barred or otherwise denied. (*Case File, Exhibits M through T.*)

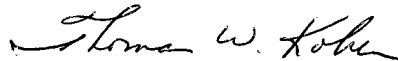
Despite having exhaustively litigated her claim in the New York courts, Claimant nonetheless argues that the Referee should not give the New York rulings “preclusive effect nor full faith and credit. . . .” (*Claimant’s Written Submission at 3.*) New Hampshire law, however, mandates that full faith and credit be given to judgments of sister states so long as the “foreign court had jurisdiction over the subject matter and the person.” *Ely v. DeRosier*, 123 N.H. 249, 459 A.2d 280 (1983). Indeed, as the New York courts had jurisdiction over both Claimant and the subject matter of her disputes, “the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action . . . or the validity of the legal principles on which the judgment is based.” *Wilson v. Shepard*, 124 N.H. 392, 469 A. 2d 1359 (1983), (*citations omitted*).

Based on the foregoing, as well as the additional arguments summarized in Liquidator's summary statement (*Exhibit A*), Claimant's objection to Liquidator's Notice of Determination should be denied and the Notice of Determination should stand as issued.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE COMMISSIONER
OF THE STATE OF NEW HAMPSHIRE, SOLELY IN
HIS CAPACITY AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY

By his attorneys,

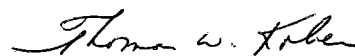


Jonathan Rosen, Esq. (N.H. Bar # 16951)
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Facsimile (212) 299-3824

June 26, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Summary Statement has been forwarded via e-mail this 26th day of June, 2006 to Claimant Madelyn Miller at mrmccc@aol.com



Thomas W. Kober

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

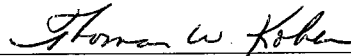
SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number: 2005-HICIL-15
Proof of Claim Number: CLMN380542
Claimant Name: Madelyn Miller**

SUPPLEMENTAL CERTIFICATE OF SERVICE

I hereby certify that a copy of Liquidator's Written Submission has been forwarded via e-mail this 26th day of June, 2006 to Claimant Madelyn Miller at mrmccc@aol.com and via First Class Mail to Ms. Madelyn Miller @ 201 Varick Street, P.O. Box 436, New York, New York 10014-0436.



Thomas W. Kober

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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**In Re Liquidator Number: 2005-HICIL-15
Proof of Claim Number: CLMN380542
Claimant Name: Madelyn Miller**

LIQUIDATOR'S SUMMARY STATEMENT

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, solely in his capacity as Liquidator of The Home Insurance Company ("Liquidator"), by and through counsel, hereby submits this summary statement to apprise the Referee of the nature of his defenses to Claimant, Madelyn Miller's ("Claimant"), Proof of Claim and as succinctly as possible direct the Referee to pertinent rulings and orders that have exhaustively and finally determined Claimant's assertions and provide ample support for the Liquidator's claim determination.

The Home Insurance Company of Indiana ("Home") insured the law firm of Kelner & Kelner ("Insured") under policy number LPL-F869807 ("the Policy") (*Case file tab H*) for liability for those professional errors and omissions claims first made against the Insured and reported to the company during the policy term of December 10, 1991 through December 10, 1993.

Claimant brought suit against the Insured by service of a summons and complaint (*Case file tab I*) dated November 18, 1992 alleging professional negligence. Pursuant to the Policy provisions, Home provided the Insured a defense to the assertions put forth by Claimant and her counsel.

By Order of Justice Thomas A. Adams, Supreme Court of the State of New York, dated September 8, 1993, Claimant's claims against the Insured were dismissed in their entirety. (*Case file tab J*).

Claimant's motion to reargue was denied by Justice Adams on June 9, 1994. (*Case file tab K*).

Claimant's appeal of Justice Adams' rulings to the Appellate Division of the Supreme Court for the State of New York, Second Department was dismissed on October 12, 1994. (*Case file tab L*). Her motion to vacate the dismissal was denied on September 19, 1995. (*Case file tab M*).

Claimant then appealed to New York's highest court, the Court of Appeals, and by decision dated June 13, 1996, her appeal was denied. (*Case file tab N*). A further motion for leave to appeal to the Court of Appeals was also denied by decision dated October 15, 1996. (*Case file tab O*).

Claimant initiated another proceeding (termed an Article 78 proceeding) against the Insured and others regarding the same matters addressed in the foregoing litigation and said action was dismissed by Hon. Aaron D. Bernstein on November 30, 2000. (*Case file tab P*). Notably, Justice Bernstein remarked that, "Although petitioner now attempts to frame her claims in the form of a CPLR article 78 proceeding with constitutional arguments, the subject of these claims, the issues raised, and the ultimate relief sought by her ... are identical to those already raised, addressed, and finally decided and rejected by orders of the Appellate Division, Second Department." (*Case file tab P, page 9*).

Further appellate efforts, including a petition seeking a writ of certiorari to the United States Supreme Court, were all denied. (*Case file tabs Q, R, S, T*).

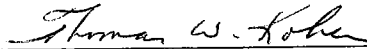
Claimant now seeks another opportunity to revisit, as noted by Justice Bernstein, matters "already raised, addressed, and finally decided and rejected" by prior orders and court rulings. The fact that Claimant, in her Mandatory Disclosures, now references "criminal implications that transcend Claimant's dismissed civil action" is immaterial to the propriety of Liquidator's determination. (*Claimant's Mandatory Disclosures, 2/23/2006*). The underlying facts giving rise to Claimant's claim are identical to those that have been presented to and rejected by duly sanctioned trial and appellate courts of the State of New York. Also, without intending to infer that Claimant's claims regarding "criminal implications" are supportable in any context, it is noted that the Home Policy issued to the Insured does not apply to "any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, **criminal**, (emphasis supplied) ... acts or omissions committed by the Insured." (*Case file tab H, page 5*). Finally, Claimant's threat "to seek disbarment and prosecution of the insureds..." (*Claimant's Mandatory Disclosures, 2/23/2006*) would similarly fall outside the scope of coverage as defined in the Policy. (*Case file tab H, page 2, e.g., definitions of Claim, Damages*).

Based on an elaboration of the foregoing, the Liquidator anticipates moving to dismiss Claimant's objection to his Notice of Determination referencing, at a minimum, defenses based on *res judicata*, collateral estoppel, statutes of limitation, policy exclusionary language and otherwise.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE COMMISSIONER OF
THE STATE OF NEW HAMPSHIRE, SOLELY IN HIS
CAPACITY AS LIQUIDATOR OF THE HOME INSURANCE
COMPANY

By his attorneys,

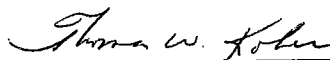


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Facsimile (212) 299-3824

March 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Summary Statement has been forwarded via e-mail this 27th day of March, 2006 to Claimant Madelyn Miller at mrnccc@aol.com



Thomas W. Kober